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R.N., Appellant)	
)	
and)	Docket No. 21-0573
)	Issued: April 14, 2022
DEPARTMENT OF HOMELAND SECURITY,)	
CUSTOMS & BORDER PROTECTION,)	
Miami, FL, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On March 2, 2021 appellant filed a timely appeal from a February 16, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issue is whether appellant has met his burden of proof to establish entitlement to continuation of pay (COP) for the period January 11 through 31, 2021.

On February 11, 2021 appellant, then a 37-year-old customs and border protection officer, filed a traumatic injury claim (Form CA-1) alleging that on January 11, 2021 he contracted COVID-19 while in the performance of duty. On the reverse side of the claim form the employing

¹ 5 U.S.C. § 8101 *et seq.*

establishment noted that he stopped work on January 11, 2021 and returned to work on January 31, 2021.

In support of his claim, appellant submitted a June 1, 2020 memorandum from the employing establishment, which noted that his position was a high-risk occupation with respect to COVID-19 exposure. He also submitted a laboratory test result, dated January 13, 2021, which revealed that he had an oral swab specimen collected on January 12, 2021 and tested positive for COVID-19.

By decision dated February 16, 2021, OWCP accepted appellant's claim for COVID-19. By separate decision of even date, it denied his claim for COP, finding that he had not reported his injury on an OWCP-approved form within 30 days of the accepted January 11, 2021 employment injury. OWCP noted that the denial of COP did not preclude him from filing a claim for disability due to the effects of the accepted employment injury.

LEGAL PRECEDENT

Section 8118(a) of FECA authorizes COP, not to exceed 45 days, to an employee who has filed a claim for a period of wage loss due to a traumatic injury with his or her immediate superior on a form approved by the Secretary of Labor within the time specified in section 8122(a)(2) of this title.² This latter section provides that written notice of injury shall be given within 30 days.³ The context of section 8122 makes clear that this means within 30 days of the injury.⁴

OWCP's regulations provide, in pertinent part, that to be eligible for COP, an employee must: (1) have a traumatic injury which is job related and the cause of the disability and/or the cause of lost time due to the need for medical examination and treatment; (2) file Form CA-1 within 30 days of the date of the injury; and (3) begin losing time from work due to the traumatic injury within 45 days of the injury.⁵

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period January 11 through 31, 2021.

Appellant filed written notice of his traumatic injury (Form CA-1) on February 11, 2021. By decision dated February 16, 2021, OWCP denied his request for COP, as his claim was not filed within 30 days of the accepted January 11, 2021 employment injury.

² *Id.* at § 8118(a).

³ *Id.* at § 8122(a)(2).

⁴ *E.M.*, Docket No. 20-0837 (issued January 27, 2021); *J.S.*, Docket No. 18-1086 (issued January 17, 2019); *Robert M. Kimzey*, 40 ECAB 762, 763-64 (1989); *Myra Lenburg*, 36 ECAB 487, 489 (1985).

⁵ 20 C.F.R. § 10.205(a)(1-3); *see also T.S.*, Docket No. 19-1228 (issued December 9, 2019); *J.M.*, Docket No. 09-1563 (issued February 26, 2010); *Dodge Osborne*, 44 ECAB 849 (1993); *William E. Ostertag*, 33 ECAB 1925 (1982).

Because appellant filed written notice of his traumatic injury claim on February 11, 2021, the Board finds that it was not filed within 30 days of the accepted January 11, 2021 employment injury, as specified in sections 8118(a) and 8122(a)(2) of FECA. Accordingly, he is not entitled to COP.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish entitlement to COP for the period January 11 through 31, 2021.

ORDER

IT IS HEREBY ORDERED THAT the February 16, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 14, 2022
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board